

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HENRY P. LOGUERCIO, M.D.
Certificate No. A-28358

Respondent.

No. D-2031

N-10021

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Division of Medical Quality, Board
of Medical Quality / Assurance as its Decision in the
above-entitled matter.

This Decision shall become effective on June 14, 1978.

IT IS SO ORDERED May 15, 1978.

Michael J. Carella
MICHAEL J. CARELLA
Secretary-Treasurer

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PROPOSED DECISION

This matter came on regularly for hearing before Rudolf H. Michaels, an Administrative Law Judge of the Office of Administrative Hearings, on March 13, 1978, in Sacramento, California.

The complainant was represented by Karl S. Engeman, Deputy Attorney General.

The respondent was not present and was not otherwise represented.

Evidence was received, the hearing was closed and the matter was submitted.

The Administrative Law Judge certifies this Decision, recommends its adoption and makes the following

FINDINGS OF FACT

I

Joseph P. Cosentino, M.D. made the Accusation in his official capacity of Acting Executive Director of the Board of Medical Quality Assurance of the State of California (hereafter referred to as the "Board").

II

Respondent, Henry P. Loguercio, M.D., on about July 25, 1957, was issued Osteopathic Physician's and Surgeon's certificate No. A-28358. On about November 6, 1962, respondent elected to use the designation "M.D." and thereby came within the jurisdiction of the Board. At all times mentioned herein, respondent was and now is within the jurisdiction of the Board. At all times material herein, the certificate was, and it now is, in full force.

III

Notice of the proceedings, and particularly of the time and place of the hearing, was given to respondent as required by law.

IV

A. Between about April 26, 1976, and about April 26, 1977, respondent, on approximately seven occasions, prescribed Darvon to persons known to him to be habitues and addicts.

B. Between on or about April 26, 1976, and on or about April 26, 1977, respondent, on approximately three occasions, prescribed Biphetamines to persons known to him to be habitues and addicts.

V

Darvon is defined as a dangerous drug within the meaning of Section 4211(k) of the Business and Professions Code.

VI

Biphetamine, also known as Dextroamphetamine plus Amphetamine complex, is a controlled substance, Schedule II within the meaning of Section 11055(d)(1) of the Health and Safety Code and as such a dangerous drug within the meaning of Section 4211(c) of the Business and Professions Code.

DETERMINATION OF ISSUES

Separate cause exists for the revocation or suspension of the certificate held by respondent and described in Finding II under the provisions of Sections 2361(a), 2390 and 2391 of the Business and Professions Code and the facts contained, respectively, in Findings IV A. and IV B.

ORDER

Certificate No. A-28358 held by respondent and described in Finding II is revoked.

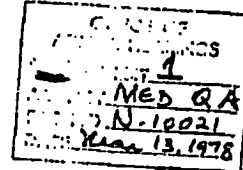
Dated: March 14, 1978

Rudolf H. Michaels

RUDOLF H. MICHAELS
Administrative Law Judge
Office of Administrative Hearings

1 EVELLE J. YOUNGER, Attorney General
2 of the State of California
3 KARL S. ENGENAN,
4 Deputy Attorney General
5 555 Capitol Mall, Suite 350
6 Sacramento, California 95814
7 Telephone: (916) 445-1939

8 Attorneys for the Complainant.



9 BEFORE THE DIVISION OF MEDICAL QUALITY
10 BOARD OF MEDICAL QUALITY ASSURANCE
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation
14 Against:

No. D-2031

15 HENRY P. LOGUERCIO, M.D.
16 Certificate No. A-28358

ACCUSATION

17 Respondent.

18 COMES NOW THE COMPLAINANT, JOSEPH P. COSENTINO,
19 M.D., and as causes for disciplinary action against the
20 above-named respondent, alleges as follows:

21 I

22 Complainant, Joseph P. Cosentino, M.D., is the
23 Acting Executive Director of the Board of Medical Quality
24 Assurance of the State of California (hereinafter referred
25 to as the "Board") and makes this accusation solely in such
26 official capacity.

27 II

28 Respondent, Henry P. Loquercio, M.D., on or about
29 July 25, 1957, was issued Osteopathic Physician's and
30 Surgeon's certificate No. A-28358. On or about November 6,
31 1962, respondent elected to use the designation "M.D." and
thereby came within the jurisdiction of the Board. At all
times mentioned herein, respondent was and now is within the

1 jurisdiction of the Board.

2 III

3 Section 2360 of the Business and Professions Code
4 provides as follows:

5 "Every certificate issued may be suspended or
6 revoked. The Division of Licensing shall refuse a
7 certificate to any applicant guilty of unprofessional
8 conduct. The proceedings under this article shall
9 be conducted in accordance with Chapter 5 (commencing
10 with Section 11500) of Part 1 of Division 3 of
11 Title 2 of the Government Code, and the Division
12 of Licensing and the Division of Medical Quality
13 shall have all the powers granted therein."

14 IV

15 Section 2361 of the Business and Professions Code
16 provides as follows:

17 "The Division of Medical Quality shall take
18 action against any holder of a certificate, who is
19 guilty of unprofessional conduct which has been
20 brought to its attention, or whose certificate has
21 been procured by fraud or misrepresentation or
22 issued by mistake.

23 "Unprofessional conduct includes, but is not
24 limited to, the following:

25 "(a) Violating or attempting to violate,
26 directly or indirectly, or assisting in or abet-
27 ting the violation of, or conspiring to violate,
28 any provision or term of this chapter.

29 "(b) Gross negligence.

30 "(c) Repeated similar negligent acts.

31 "(d) Incompetence.

"(e) Gross immorality.

"(f) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a certificate holder, or otherwise, or whether the act is a felony or a misdemeanor.

"(3) Any action or conduct which would have warranted the denial of the certificate."

v

Section 2390 of the Business and Professions Code provides as follows:

"The use or prescribing for or administering to himself, of any of the controlled substances specified in Schedule I of Section 11054, or Schedule II of Section 11055, or any narcotic drug specified in Schedule III of Section 11056, of the Health and Safety Code; or the use of any of the dangerous drugs specified in Section 4211 of this code, or of alcoholic beverages to the extent, in such a manner as to be dangerous or injurious to a person holding a certificate under this chapter, or to any other person or to the public, or to the extent that such use impairs the ability of such person so holding such certificate to conduct with safety to the public the practice authorized by such certificate or the conviction of more than one misdemeanor or any felony involving the use, consumption or self-administration of any of the substances referred to in this section or any combination thereof, constitutes unprofessional

1 conduct within the meaning of this chapter; the
2 record of the conviction is conclusive evidence of
3 such unprofessional conduct; a plea or verdict of
4 guilty or a conviction following a plea of nolo
5 contendere is deemed to be a conviction within the
6 meaning of this section; the Division of Medical
7 Quality may order the license suspended or re-
8 voked, or may decline to issue a license, when the
9 time for appeal has elapsed or the judgment of
10 conviction has been affirmed on appeal or when an
11 order granting probation is made suspending im-
12 position of sentence, irrespective of a subsequent
13 order under the provisions of section 1203.4 of
14 the Penal Code allowing such person to withdraw
15 his plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or
17 dismissing the accusation, information or indict-
18 ment."

19 VI

20 Section 2391 of the Business and Professions Code
21 provides as follows.

22 "Unless otherwise provided by this section,
23 the prescribing, selling, furnishing, giving away
24 or administering or offering to prescribe, sell,
25 furnish, give away or administer any of the drugs
26 or compounds mentioned in Section 2390 to a habitue
27 or addict constitutes unprofessional conduct within
28 the meaning of this chapter.

29 "If the drugs or compounds are administered
30 or applied by a licensed physician and surgeon of
31 this state or by a registered nurse acting under

1 his instructions and supervision, this section
2 shall not apply to any of the following cases:

3 "(a) Emergency treatment of a patient whose
4 addiction is complicated by the presence of incur-
5 able disease, serious accident or injury, or the
6 infirmities attendant upon age.

7 "(b) Treatment of habitues or addicts in
8 institutions approved by the Division of Licensing
9 where the patient is kept under restraint and
10 control, or in city or county jails or state prisons.

11 "(c) Treatment of addicts as provided for by
12 Section 11217.5 of the Health and Safety Code."

13 VII

14 Respondent is guilty of unprofessional conduct as
15 defined by section 2391 and thereby subject to discipline
16 pursuant to section 2361 in that respondent prescribed drugs
17 mentioned in section 2390 to habitues and addicts as more
18 particularly set forth hereinafter:

19 A. Between on or about April 26, 1976, and on or
20 about April 26, 1977, respondent, on approximately seven
21 occasions, prescribed Darvon to persons who respondent knew
22 to be habitues and addicts.

23 B. Between on or about April 26, 1976, and on or
24 about April 26, 1977, respondent, on approximately three
25 occasions, prescribed Biphentamines to persons who respondent
26 knew to be habitues and addicts.

27 VIII

28 Darvon is defined as a dangerous drug pursuant to
29 section 4211(k) of the Business and Professions Code.

30 / / / /

31 / / / /

IX

Biphetamine, also known as Dextroamphetamine plus Amphetamine complex, is classified as a controlled substance, Schedule II pursuant to section 11055(d)(1) of the Health and Safety Code and is defined as a dangerous drug pursuant to section 4211(c).

WHEREFORE, complainant prays that the Division of Medical Quality hold a hearing on the matters alleged herein and following a hearing issue a decision:

(1) Revoking or suspending the certificate of respondent;

(2) Taking such other and further action as is deemed necessary and proper.

DATED: JUNE 28, 1977

Joseph P. Coentino
JOSEPH P. COSENTINO, M.D.
Acting Executive Director
Board of Medical Quality Assurance

Complainant